

Applicant: Kelly S. Stack
Serial No.: 10/602,446
Filing Date: June 24, 2003
Docket No.: STK-001

REMARKS

Reconsideration and allowance is respectfully requested.

Before entry of this amendment, claims 1-20 were pending. In the Office Action, claims 1-20 were rejected. In the present amendment, claims 1, 6-11 and 15-19 are amended. After entry of the amendment, claims 1-20 are pending.

I. Claim 1

Claim 1 is rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. (Office Action, p. 2, line 7-8.) The Examiner states that a claim that includes within its scope a human being is not considered to be patentable subject matter. To overcome the rejection, Applicant amends claim 1 as suggested by the Examiner. Reconsideration of the § 101 rejection and allowance of claim 1 are requested.

II. Claims 1-2, 4, 6-14 and 16-29

Claims 1-2, 4, 6-14 and 16-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by Wilson et al. (published as 2004/0098073 and issued as USP 7,060,086) (Office Action, p. 3, lines 1-2).

A. Independent claim 1

Claim 1 as amended recites, "wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". Wilson does not form the basis for a valid rejection under § 102(e) because Wilson does not disclose all of the limitations of claim 1. Specifically, Wilson does not disclose plural layers of fabric on a wrist-facing side of a bracelet.

The Examiner states that the fabric layer (112) and the inside layer (118) make up plural layers on the wrist-facing side of the bracelet. (Office Action, p. 3, line 22 – p. 4, line 2). Applicant respectfully disagrees. Wilson does not disclose

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a bracelet comprised of “fabric layer (112)” and inside layer (118). The “fabric layer” 112 of Wilson is not part of the thermal treatment pack 100 of Wilson. Instead, “fabric layer (112)” is actually disclosed in Wilson as “an elastic tube or wrapping of loop material 112, such as terry cloth, [which] can then [be] placed around the limb where the thermal treatment pack 100 is to be positioned” (Wilson, col. 6, lines 56-58) (emphasis added). Thus, the elastic tube of loop material 112 is not part of the thermal treatment pack 100 of Wilson. Consequently, Wilson does not disclose a bracelet with plural layers of fabric.

Because Wilson does not disclose all of the elements of claim 1, reconsideration of the § 102(e) rejection and allowance of claim 1 are requested.

B. Dependent claims 2, 4 and 6-10

Claims 2, 4 and 6-10 depend directly or indirectly from claim 1 and are allowable for at least the same reasons for which claim 1 is allowable. Reconsideration of the § 102(e) rejection and allowance of claims 2, 4 and 6-10 are requested.

C. Independent claim 11

Claim 11 as amended recites, “enclosing a substance in a capsule in a bracelet, wherein the bracelet is made of fabric; . . . wherein the capsule is adapted to allow the infant to suck on the capsule through the fabric”. Wilson does not form the basis for a valid rejection under § 102(e) because Wilson does not disclose all of the limitations of claim 11. Specifically, Wilson does not disclose a capsule in a fabric bracelet adapted to allow an infant to suck on the capsule through the fabric.

Wilson involves thermal treatment packs used to treat limbs. Wilson does not disclose a capsule in a thermal treatment pack that is adapted to allow an infant to suck on the capsule. Because Wilson does not disclose all of the elements of claim 11, reconsideration of the § 102(e) rejection and allowance of claim 11 are requested.

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D. Dependent claims 12-14 and 16-18

Claims 12-14 and 16-18 depend directly or indirectly from claim 11 and are allowable for at least the same reasons for which claim 11 is allowable. Reconsideration of the § 102(e) rejection and allowance of claims 12-14 and 16-18 are requested.

E. Independent claim 19

Claim 19 as amended recites, "means for attaching the capsule to a wrist of an infant, for insulating the wrist of the infant from the cooled substance, and for allowing the infant to suck on the capsule through the means". Wilson does not form the basis for a valid rejection under § 102(e) because Wilson does not disclose all of the limitations of claim 19. Specifically, Wilson does not disclose a means for attaching a capsule to an infant's wrist and for allowing the infant to suck on the capsule through the means.

Wilson involves thermal treatment packs used to treat limbs. Wilson does not disclose a capsule in a thermal treatment pack that can be sucked on by an infant. Because Wilson does not disclose all of the elements of claim 19, reconsideration of the § 102(e) rejection and allowance of claim 19 are requested.

F. Dependent claim 20

Claim 20 depends from claim 19 and is allowable for at least the same reasons for which claim 19 is allowable. Reconsideration of the § 102(e) rejection and allowance of claim 20 are requested.

III. Claim 19

Claim 19 is rejected under 35 U.S.C. § 102(b) as being anticipated by Werton (USP 5,160,344) (Office Action, p. 5, lines 4-5). Claim 19 as amended recites, "means for attaching the capsule to a wrist of an infant, for insulating the wrist of the infant from the cooled substance, and for allowing the infant to suck

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on the capsule through the means". Werton does not form the basis for a valid rejection under § 102(b) because Werton does not disclose all of the limitations of claim 19. Specifically, Werton does not disclose either (i) a means for attaching a capsule to an infant's wrist, or (ii) a means for allowing the infant to suck on the capsule through the means.

The Examiner states that "Werton discloses a teether comprising a cooled substance (24) and means for attaching the cooled substance to a wrist of an infant. The teether is capable of being slide over the infant's wrist or alternatively snapped on using the interconnection system (14)." (Office Action, p. 5, lines 5-8). Applicant respectfully disagrees. These statements are speculative and not based on the disclosure of Werton. Werton does not disclose a means for attached a cooled substance to a wrist of an infant. Werton discloses a grasping component 10b that is held by the hand of a child. (See, e.g., col. 1:68-2:1; 2:12-13; 2:58-59; 3:8-9; 4:23-24; and 4:27-28) Nowhere does Werton disclose that the teether 10 can be attached to a wrist of an infant. Werton does not mention the word "wrist". Werton does not disclose that the teether 10 can be slid over an infant's wrist or that the teether 10 can be snapped on. Werton does not mention the word "slid" or "slide".

Because Werton does not disclose all of the elements of claim 19, reconsideration of the § 102(b) rejection and allowance of claim 19 are requested

IV. Dependent claims 3 and 15

Claims 3 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson et al. (Office Action, p. 5, lines 17-18).

Claim 3 includes the following limitation of base claim 1, "wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". Wilson does not form the basis for a valid rejection of claim 3 under § 103(a) because Wilson does not teach plural layers of fabric on a wrist-facing side of a bracelet. The loop material 112 of Wilson does not disclose a layer of fabric of the thermal treatment pack 100 of Wilson

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because the elastic tube of loop material 112 is not part of the thermal treatment pack 100. Consequently, Wilson does not disclose a bracelet with plural layers of fabric. Reconsideration of the § 103(a) rejection and allowance of claim 3 are requested.

Claim 15 includes the following limitation of base claim 11, "enclosing a substance in a capsule in a bracelet, wherein the bracelet is made of fabric; . . . wherein the capsule is adapted to allow the infant to suck on the capsule through the fabric". Wilson does not disclose a capsule in a fabric bracelet adapted to allow an infant to suck on the capsule through the fabric. Wilson involves thermal treatment packs used to treat limbs and does not disclose a capsule in a thermal treatment pack that is adapted to allow an infant to suck on the capsule. Reconsideration of the § 103(a) rejection and allowance of claim 15 are requested.

V. Dependent claim 5

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Brink (USP 5,843,145) (Office Action, p. 6, lines 3-4). To establish a *prima facie* case of obviousness, the Examiner must demonstrate three criteria. The MPEP § 2142 states:

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claimed limitations." MPEP § 2142 (emphasis added).

Claim 5 includes the following limitation of base claim 1, "wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". Wilson and Brink do not form the basis for a valid rejection of claim 5 under § 103(a) because neither Wilson nor Brink

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teaches plural layers of fabric on a wrist-facing side of a bracelet.

Reconsideration of the § 103(a) rejection and allowance of claim 5 are requested.

VI. Claims 1-2 and 4-8

Claims 1-2 and 4-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Werton in view of Brink (Office Action, p. 6, lines 18-19).

A. Independent claim 1

Claim 1 as amended recites, "a bracelet . . . adapted to be attached around an infant's wrist, . . . wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". Werton and Brink do not form the basis for a valid rejection of claim 1 under § 103(a) because neither Werton nor Brink teaches either (i) a bracelet adapted to be attached around an infant's wrist, or (ii) plural layers of fabric on a wrist-facing side of a bracelet.

The Examiner states that "Werton discloses a bracelet, the bracelet enclosing a volume. The bracelet is capable of being attached to an infant's wrist. . . . The bracelet . . . if worn as a bracelet, has a wrist-facing side and an outer side opposite the wrist-facing side." (Office Action, p. 6, line 19 – p. 7. line 5). Applicant respectfully disagrees. These statements are speculative and not based on the disclosure of Werton. Werton does not teach a bracelet. Moreover, Werton does not teach a bracelet adapted to be attached around an infant's wrist. Instead, Werton teaches a grasping component 10b of a teether 10 that is held by the hand of a child. (See, e.g., col. 1:68-2:1; 2:12-13; 2:58-59; 3:8-9; 4:23-24; and 4:27-28) Nowhere does Werton teach that the teether 10 is a bracelet or can be attached to a wrist of an infant. Werton does not mention either the word "bracelet" or the word "wrist". Werton does not teach that the teether 10 can be worn as a bracelet.

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Brink also does not teach a bracelet or plural layers of fabric on a wrist-facing side of a bracelet.

Because the combination of Werton and Brink does not disclose all of the elements of claim 1, Werton and Brink do not form the basis for a valid rejection under § 103(a). Reconsideration of the § 103(a) rejection and allowance of claim 1 are requested.

B. Dependent claims 2 and 4-8

Claims 2 and 4-8 depend directly or indirectly from base claim 1. Thus, claims 2 and 4-8 include the following limitation of base claim 1, "a bracelet . . . adapted to be attached around an infant's wrist, . . . wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". Werton and Brink do not form the basis for a valid rejection of any of claims 2 or 4-8 under § 103(a) because neither Werton nor Brink teaches either (i) a bracelet adapted to be attached around an infant's wrist, or (ii) plural layers of fabric on a wrist-facing side of a bracelet.

Werton does not teach a bracelet adapted to be attached around an infant's wrist. Werton does not even teach a bracelet. Nowhere does Werton teach that the teether 10 of Werton is a bracelet or can be attached to a wrist of an infant. Brink also does not teach a bracelet or plural layers of fabric on a wrist-facing side of a bracelet.

Werton and Brink do not form the basis for a valid rejection of claims 2 and 4-8 under § 103(a) because neither Werton nor Brink teaches a bracelet adapted to be attached around an infant's wrist, wherein the bracelet is made of plural layers of fabric on the wrist-facing side. Reconsideration of the § 103(a) rejection and allowance of claims 2 and 4-8 are requested.

VII. Dependent claim 3

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Werton in view of Brink and further in view of Wilson (Office Action, p. 7, lines 17-

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18). Claim 3 depends from claim 1 and includes the following limitation of claim 1, "wherein the bracelet is made of plural layers of fabric on the wrist-facing side and a single layer of the fabric on the outer side". The combination of Werton, Brink and Wilson does not form the basis for a valid rejection of claim 3 under § 103(a) because none of Werton, Brink or Wilson teaches plural layers of fabric on a wrist-facing side of a bracelet.

The loop material 112 of Wilson does not teach a layer of fabric of the thermal treatment pack 100 of Wilson because the elastic tube of loop material 112 is not part of the thermal treatment pack 100. Consequently, Wilson does not teach a bracelet with plural layers of fabric. Neither Werton nor Brink teaches a bracelet made of plural layers of fabric.

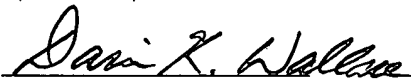
Because the combination of Werton, Brink and Wilson does not disclose all of the elements of claim 3, Werton, Brink and Wilson do not form the basis for a valid rejection under § 103(a). Reconsideration of the § 103(a) rejection and allowance of claim 3 are requested.

VIII. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that the entire application (claims 1-20 are pending) is in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner would like to discuss any aspect of this application, the Examiner is requested to contact the undersigned at (925) 621-2121.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By


Darien K. Wallace

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Respectfully submitted,



Darien K. Wallace
Attorney for Applicants
Reg. No. 53,736
Customer No. 47,713